DOCUMENT RESUME

ED 165 552 HE 010 784

AUTHOR Shulman, Carol Herrnstadt
TITLE Compliance with Federal Regulations: At What Cost? Research Report No. 6.
INSTITUTION American Association for Higher Education, Washington, D.C.; ERIC Clearinghouse on Higher Education, Washington, D.C.
SPONS AGENCY National Inst. of Education (DHEW), Washington, D.C.
PUB DATE 78
NOTE 59p.; Contains occasional small print
AVAILABLE FROM Publications Department, American Association for Higher Education, One Dupont Circle, Suite 780, Washington, D.C. 20036 ($4.00)

EDRS PRICE MF-$0.83 HC-$3.50 Plus Postage.
DESCRIPTORS Civil Rights Legislation; College Role; Educational Finance; Equal Education; Equal Opportunities (Jobs); *Federal Aid; Federal Legislation; *Federal Regulation; *Financial Problems; Financial Support; *Government School Relationship; *Higher Education; Institutional Autonomy; *Laws; Legal Responsibility
IDENTIFIERS Age Discrimination in Employment Act 1967; *Compliance (Legal); Education Amendments 1972 Title IX; Employee Retirement Income Security Act 1974; Executive Order 11246; Information Analysis Products; Rehabilitation Act 1973 Section 504; Social Security Act 1935

ABSTRACT

Two problem areas have arisen between the Federal Government and higher education institutions dependent on federal aid. One problem is a growing conflict over regulations, which involves the threat of loss of federal aid to ensure enforcement of federal civil rights goals. The second problem is an economic burden on academic institutions resulting from compliance with the regulations. Three laws that have been sources of controversy in the higher education community are executive order 11246, as amended, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973. The issues that have arisen in connection with equal educational and employment opportunity programs are explored. Problems also arise from requirements of the Social Security Act of 1935, as amended, the Employee Retirement Income Security Act of 1974, and the Age Discrimination in Employment Act of 1967, as amended. These programs impose high expenses on colleges and institutions, and primary teaching and learning missions may be impaired due to lack of funds. Colleges and universities urge that they not be looked on as just one more sector of the nation's economy, since they cannot pass on to students the full cost needed to meet their expenses. Other subjects discussed are: administrative costs and changes resulting from regulatory requirements; the academic community's perception of a heightened adversarial climate on campus; and recommendations to improve the regulatory process so that it better serves the needs of the academic community. (SW)

ED165552

Compliance with Federal Regulations: At What Cost?

Carol Herrnstadt Shulman

AAHE-ERIC/Higher Education
Research Report No. 6
1978

U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
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Prepared by the
ERIC Clearinghouse
on Higher Education
The George Washington University
Washington, D.C. 20036

Published by
the American Association
for Higher Education
One Dupont Circle, Suite 780
Washington, D.C. 20036

HE 010 704

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Foreword

The degree and areas of federal support for higher education have changed considerably over the past decade. In 1968 expenditures for all of higher education were $19.9 billion, with federal support equalling 19.1 percent; by 1977, expenditures had risen to $45.5 billion, but federal support had decreased to 15.4 percent. During this period of time the changes in federal higher education policies were clearly reflected in areas of federal support:

Areas	Percentage distribution 1967	1977
Student Support	46.7	83.1
Institutional Support: Current Operations	10.1	13.8
Facilities—equipment	39.5	2.0
Teacher training	2.9	0.4
Education research		0.7

With these changes in support came changes in the number and type of federal programs and agencies involved with higher education. There are now more than 400 federal programs being supervised by more than 50 executive agencies, all issuing their own standards, program guidelines, regulations, and audit requirements. One vivid example of this growth of federal involvement is the number of proposed regulations and related notices promulgated through the *Federal Register*: 32 documents were published in 1972, whereas in 1976, 270 were published—a growth of 840 percent.

During this time, higher education institutions moved from a period of prosperity to one of financial stress, from a period when institutions had the option of accepting or rejecting federal support to a period where, for many institutions, survival was not possible without federal assistance.

What does this dependency on federal aid and the increase in federal involvement mean for higher education? The AAHE-ERIC/Higher Education Research Report Series first addressed this issue in a monograph written by Louis W. Bender, entitled *Federal Regulations and Higher Education* (No. 1—1977). Since then there have been two significant developments: (1) an increased opportunity to

use the threat of loss of federal support to enforce federal civil rights goals; and (2) changes in federal laws and regulations governing general employment activity that have profound implications for the financial well-being of higher education institutions.

It is these two issues that this report examines. Carol Herrnstadt Shulman, a research associate at the Clearinghouse on Higher Education, has carefully and succinctly identified the major factors behind these changes and highlighted what they mean for higher education institutions. This monograph should prove very useful for administrators and faculty members when they examine their role and that of their institution in light of goals the federal government has set for all of society.

Jonathan D. Fife, Director
ERIC Clearinghouse on Higher Education

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Overview

Historically, the federal government has assisted higher education institutions in their missions of teaching, research, and community service because it recognizes that these objectives also serve national needs for a highly trained and informed citizenry. These federal aid programs have made major contributions to the growth and development of colleges and universities over the past twenty years.

But currently federal officials and the higher education community have not focused on this positive partnership. Instead, they have quarreled over the way federal-aid-to-education programs are also used to accomplish other federal goals: nondiscrimination, equal education, and equal employment opportunities. College officials charge that requirements for these civil rights goals interfere qualitatively and economically in the internal life of an academic community.

The higher education community also recognizes that as a major business, employing about 1.5 million people, they are subject to federal laws and regulations governing employment activity. These employment-related obligations create economic problems that more adversely affect higher education institutions than traditional business enterprises because of their distinct financial and employment structures.

Higher education officials have seen academic and economic pressures resulting from regulatory problems evolve and intensify since the 1960's. *They believe they are now in a critical period in their relationship with government agencies and Congress; either they will work out their regulatory problems or colleges will become so inundated by federal requirements that they will be unable to accomplish their primary purposes.* To resolve their problems, the academic community is working to inform itself and Congress about the real impact of federal requirements on institutions' academic processes and economic conditions.

College officials believe the federal laws and regulations that most intrude on academic life are those that subject institutions to regulations on nondiscrimination and equal opportunity if they are recipients of financial assistance. Virtually all colleges and universities meet federal definitions of "recipient" because they receive direct or

indirect federal assistance, including monies from enrolled students who receive federally-sponsored student financial aid.

Of these civil rights laws and regulations, three have been identified as the most intrusive into academic life or as having the most potential for such interference. From the beginning, each has been a source of controversy in the higher education community. They are: Executive Order 11246, as amended ("affirmative action"); Title IX of the Education Amendments of 1972; and Section 504 of the Rehabilitation Act of 1973. A review of the background of these laws, their intrusion into academic life, where evidence is available, their costs to institutions, and compliance problems suggest some conclusions:

- There is insufficient hard evidence to demonstrate that these laws have negatively interfered with academic conditions on a systemic basis;
- Costs involved in achieving compliance under these laws may be major and may cause severe financial pressures for colleges and universities; and
- The compliance process itself seems to create serious problems for colleges and universities, particularly major institutions, because it is unpredictable and can create hardships for institutions and the groups that are to be protected by the law.

The higher education community has become more sensitive to its financial obligations as an employer because of legislation passed during the 1970's. To an alarming degree new laws, or changes in old ones, have escalated the cost of meeting federally mandated business obligations. Colleges have especially felt the impact of three employment-related laws that pose some of the most serious long-range financial-policy implications for higher education. They are: the Social Security Act of 1935, as amended; the Employee Retirement Income Security Act (ERISA) of 1974; and the Age Discrimination in Employment Act of 1967 (ADEA), as amended. A review of these three laws and their impact on institutional finances, and in the case of ADEA, on employment policy for faculty, is presented in this report.

The academic community believes that its relationship with the federal bureaucracy in this area also underscores its belief that the federal government is often insensitive to the unique characteristics of the academic community: e.g., colleges fear they will have a particularly hard time paying for increased Social Security costs because, unlike profitmaking businesses, they are limited in their ability

to pass on higher costs to their "customers." Further, university officials argue that these employee-benefit programs impose such high expenses on their institutions that the primary teaching and learning missions may be impaired due to lack of funds.

Within the last ten years, colleges and universities have acquired extensive experience with the scope and quality of the problems posed by increased federal-institutional interactions. Two umbrella issues have emerged out of this experience that most concern the academic community. First, administrative problems have developed because the costs of implementing regulations are burdensome and because regulations required that institutions' administrative organization and methods adapt to federal requirements. Second, critics of the regulatory process charge that a heightened adversarial relationship exists between the campus community and federal enforcers, partially because the federal government is insensitive to unique institutional needs and procedures.

In the past, these problems have not been documented effectively. But higher education advocates are making new efforts to offer detailed, quantitative information on how federal policy influences their operations. They are also continuing to offer personal accounts that underscore their problems with federal regulations because they believe that many qualities in their teaching, learning, and research activities cannot be quantitatively measured, but are nonetheless important. Further, the academic community also has an interest in reforming the regulatory process so that regulations become more sensitive to higher education's special circumstances.

Overall, regulatory problems have resulted in large part because higher education holds as fundamental principles certain concepts that are often in conflict with regulatory practices. Among these is the belief that colleges and universities deserve special treatment because they are a unique and fundamental national resource. The government's failure to take account of this in its laws and regulations impairs academic efforts and thwarts the government's own goals. Pleas for special treatment, however, do not constitute a coordinated, planned effort to influence policymaking. There still remains the major task of using effective lobbying techniques that can speak for the sometimes conflicting interest groups that constitute the academic community.

Introduction

Contemporary American colleges and universities are multifaceted enterprises organized to accomplish the three missions of teaching, research, and community service. The federal government has long recognized that higher education's objectives also serve national needs for a highly trained and informed citizenry, and for new knowledge and technological developments to promote economic growth. Accordingly, it has supported higher education's activities through legislation providing funds to students and institutions through student financial aid and categorical and noncategorical aid. These federal programs have made major contributions to the qualitative and quantitative growth and development of colleges and universities over the past twenty years.

But since the late 1960's federal officials and the higher education community have not focused on the government's contributions to higher education's achievements. Instead, they have quarreled over the way education programs are also used to accomplish other types of federal goals: nondiscrimination, equal education, and equal employment opportunities. College officials assert their interest in promoting these goals, but charge that federal requirements interfere with their efforts to accomplish institutional objectives in several major ways: (1) they reduce judgment in such areas as personnel policy and curricula development; (2) they redirect administration and faculty efforts from academic issues to problems of compliance; and (3) they can be costly to administer, causing the institutions to divert needed funds from the academic enterprise. Until recently this debate over the impact of the regulatory process has been the major cause of acerbic relations between the academic community and the federal government.

The higher education community also recognizes that a second area of federal policy is having a growing impact on higher education institutions, one which did not develop with specific reference to higher education. Colleges and universities are major businesses, employing about 1.5 million people, or 2 percent of the total work force (Policy Analysis Service 1978). In this role, colleges and universities, like all business enterprises, are subject to laws and regulations governing employment activity.

Two aspects of these employment-related obligations create eco-

nomic problems that more adversely affect higher education institutions than traditional business enterprises. *First,* requirements such as Social Security*, which are calculated for each employee, more severely affect labor-intensive enterprises like colleges and universities than other types of enterprises because they raise the indirect cost of personnel. Moreover, higher education institutions are limited in their ability to reduce these personnel costs by a general reduction of their staff, particulary at the upper range of salaries. This is because educational activities require an irreducible minimum of professional employees, and because tenure policies and contractual obligations for one or more years hamper an institution's ability to adjust these personnel costs, especially during the academic year. This problem is further exacerbated by some federal requirements, e.g. Social Security and mandatory retirement laws that increase the employer's financial outlays at the upper end of the salary schedule. Academic institutions cannot readily reuce faculty size, so they are especially hard-hit by these changes.

Second, these regulations do not distinguish between traditionally profit-oriented enterprises and institutions such as colleges and universities. Unlike the former, colleges have less flexibility in responding to increases in their overhead costs because their expenses and their charges to "customers" are fixed for specific periods of time. Moreover, the income structure of higher education differs from private industry. Colleges receive money from multiple sources—state and federal governments, charitable giving, and tuition—but only control the funds brought in by student charges. In contrast, private industry controls its only revenue source, which is the price charged to its buyers. Colleges must generally pass a disproportionate amount of their cost increases onto their students, including those created by regulatory requirements, because increases from other sources have been failing to match rising expenses (Van Alstyne and Coldren 1976). As the academic community plans for the future, it sees a growing financial burden resulting from its obligations as employer.

Historical Background

There are two problem areas in federal-higher education relationships as described above: (1) growing conflict over regulations resulting from government support of higher education, and (2) an eco-

*As nonprofit institutions, colleges and universities are not obligated to join the Social Security system. As a practical matter, however, most institutions have chosen to participate. For a fuller discussion see Chapter II.

nomic burden for academic institutions resulting from federally mandated employment obligations.* These areas have emerged as significant causes for concern over the past fifteen years.

Federal efforts to achieve civil rights goals through programs of support for higher education are a logical consequence of the context in which the higher education legislation was enacted. During the 1960's, civil rights activists made the concepts of nondiscrimination and social justice national concerns. Schools and colleges were singled out as social institutions that had the potential to remedy past injustices by providing upward social mobility through better and more extensive educational opportunities (Gladieux and Wolanin 1976). This idea was translated into the Higher Education Act of 1965, which gave substantial federal support to colleges and universities (Gladieux and Wolanin 1976). The Education Amendments of 1972, amending the 1965 Act, extend and enlarge upon this concept, making equal educational opportunity "the central commitment of federal higher education policy" (Gladieux and Wolanin 1976, p. 224). This legislation implemented the equal educational opportunity commitment by channeling most support for higher education through programs for student assistance.

This strategy has had major significance for higher education because it indissoluably links government support for higher education with civil rights concepts that developed during the 1960's. In other words, federal assistance to all recipients is conditioned on the recipients' agreement to abide by laws and regulations implementing civil rights commitments, or they risk losing their federal aid. Under the 1972 Amendments, virtually all colleges and universities in the country are recipients and therefore enter into this arrangement. In the federal view, this is an appropriate relationship.

Federal legislation regulating the employer's personnel practices have also emerged out of concern for achieving social justice. This effort dates back to the 1930's, with the passage of legislation such as the Social Security Act, but the last ten years have seen a rapid acceleration in the federally-mandated social costs an employer must bear, e.g. unemployment compensation, new mandatory retirement age limits, Social Security increases (Van Alstyne and Coldren 1976). These laws apply to all employers, but specific exemptions have been made in some cases for nonprofit institutions or agencies of state gov-

*These two categories overlap in many areas; for example, regulations affecting academic processes also have economic consequences; similarly, the greater economic burden imposed by employer-related costs may divert institutional funds from academic programs.

ernments.* These state agencies may be subject to state requirements in lieu of the federal law.

The recent passage of the 1978 Amendments to the Age Discrimination in Employment Act of 1967 is a notable exception to this history; it exempts college administrations from compliance with the new mandatory retirement age of 70 until 1982, which is more than three years after the law's effective date for most employers. This exception suggests that college administrations were partially successful in persuading Congress that higher education institutions would be more adversely affected than traditional business entities because of their unique employment and financial structures.

Academic Response

Higher education officials have seen academic and economic pressures resulting from regulatory problems evolve and intensify since the 1960's. *They believe they are now in a critical period in their relationship with government agencies and Congress: either they will work out their regulatory problems or colleges will become so inundated by federal requirements that they will be unable to accomplish their primary purposes.*

To resolve this crisis, the academic community is working to inform itself and Congress about the real impact of federal requirements on institutions' academic processes and economic conditions. This research report will examine information that has resulted from these endeavors. The report will contain three sections: Chapter one will discuss regulatory impacts on colleges' academic processes; chapter two will describe economic impacts of federal laws and regulations; and the concluding chapter will focus on the regulatory process itself, i.e. its overall impact, and includes recommendations for making the process more sensitive to the needs of higher education.**

*In theory, such exemptions may relieve colleges of some financial pressures, but colleges commonly provide their employees with benefits similar to those found in other sectors of society. Therefore, they experience no financial benefits from these exemptions.

**It would be a herculean task to review comprehensively the impact of all federal statutes, regulations, and Executive Orders affecting higher education. One source ("Compendium of Federal . . ." 1977) cites fifty-nine such regulatory authorities, and an additional four hundred grant programs. This report focuses on six major federal programs: Executive Order 11246, as amended; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Social Security Act of 1935 as amended; the Employee Retirement Income Security Act (ERISA) of 1974; and the Age Discrimination in Employment Act (ADEA) of 1967 as amended.

Regulatory Effects on Academic Life

Colleges and universities are subject to regulations on nondiscrimination and equal opportunity if they are recipients of financial assistance. "Recipient" is a broadly defined term, so that virtually all colleges and universities meet its definition.

For example, the regulations implementing Section 504 of the Rehabilitation Act of 1973 provide a typical definition of "recipient:"

> . . . any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, *but excluding the ultimate beneficiary of the assistance.* [Emphasis added] ("Nondiscrimination on the Basis of Handicap . . ." 1977)

Under this definition, a student receiving federal assistance is not a "recipient" for compliance purposes, but the subsequent transferees of this aid, e.g. any sector of the college community, are classified as "recipients" and must comply with all regulations. Further, the entire college community comes under regulation if any sector is affected.

The three federal civil rights regulations that have affected or have the most potential to the academic community are:

(1) Executive Order 11246, as amended, which bars federal contractors from discriminating in employment on the basis of race, color, religion, national origin, or sex. It also requires the contractor to take "affirmative action" in all employment procedures and practices.*

(2) Title IX of the Education Amendments of 1972, which prohibits sex discrimination in all educational programs and activities receiving federal financial assistance.

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*Strictly speaking, the Executive Order might be classified as an employment-related obligation but the Department of Labor delegated its enforcement responsibilities to the Office for Civil Rights in the Department of Health, Education, and Welfare, which has developed guidelines tailored to the needs of higher education institutions (see "Format for 1975"). This enforcement responsibility is scheduled to revert to the Labor Department's Office of Federal contract Compliance Programs on Oct. 1, 1978 (Steinbach "Memorandum to Interested Persons," 1978).

(3) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in all educational programs and activities receiving federal financial assistance.

The Laws and Regulations

An introduction to the three laws discussed in this chapter—their origins and their implementing regulations—is necessary background to understanding their impact on academic life today. From the beginning, these laws have been sources of controversy in the higher education community, and time has not remedied this difficulty.

Executive Order 11246, As Amended—Executive Order 11246, issued in 1965, reflects the national commitment to social justice developed during the 1960's. It prohibits federal contractors from discriminating on the basis of race, color, religion, or national origin; and it requires contractors to take "affirmative action" to insure that discrimination does not occur in employment situations. It was amended in 1967 (Executive Order 11375) to include sex as a protected class. The Order applies to a sizeable but uncalculated number of colleges. Contractors must agree to abide by the requirements of the Executive Order if they administer contracts totaling $10,000 or more in a 12-month period, and must have a *written* compliance plan if they administer one or more federal contracts totaling $50,000 or more. They are also subject to a pre-award compliance review before they can receive a federal contract for $1 million or more ("Equal Employment Opportunity . . ." 1977). The $10,000 ruling is a relatively new addition to the Executive Order, and may be important for institutions with small federal contracts who heretofore have not been covered by the order ("Small Contract . . ." 1978).

But the Order's importance for higher education did not become clear until 1970, when the Women's Equity Action League filed a class action complaint with the U.S. Department of Labor against all colleges and universities covered under the Executive Order. This action eventually brought federal investigators on college campuses.

The Executive Order is implemented by Revised Order No. 4, regulations developed by the Department of Labor for all federal contractors. The Department of Labor delegated responsibility for implementing the Order for higher education to the Department of Health, Education, and Welfare, Office for Civil Rights.

The Revised Order explains the affirmative action concept and

describes how affirmative action in the workplace is to be achieved. As described in the order:

> An affirmative action program is a set of specific and result oriented procedures to which a contractor commits himself to apply every good faith effort. . . . An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to increase materially the utilization of minorities and women, at all levels and in all segments of his work force where deficiencies exist (41 CFR §60-2.10).

As the terminology of the Revised Order suggests, these regulations were not written specifically for colleges and universities, but for all industries in the United States. To adapt it for use by colleges and universities, the Department of Labor and HEW's Office for Civil Rights devised a set of guidelines that may be followed by higher education institutions in developing affirmative action plans. This "Format for Development of an Affirmative Action Plan by Institutions of Higher Education (1975) employs the terminology found in the Revised Order, but also makes reference to specific issues for college administrators to consider. The Format includes three basic areas: "a work force analysis, a utilization analysis, and goals and timetables, including 'specific and detailed action oriented programs'" (Gerry 1975, p. 2). These areas are explained in academic terms. For example, under the heading of "work force analysis," which requires an institution to provide a complete listing of its "job titles," the Format advises that an institution may combine departments having similar disciplines into one grouping, i.e. "Physical Sciences" might include astronomy, astrophysics, chemistry, geology, and physics ("Format . . ." 1975, p. 7). Faculty titles may then be listed within this broader aggregation.

But it is difficult to calculate how useful the Format has been to administrators because it was not published until four years after the Revised Order. By that time, most institutions had had to develop affirmative action plans on their own, relying on a network of interinstitutional information, organizational assistance from higher education and women's groups, and often confusing or conflicting guidance from regional OCR offices. Nevertheless, the Format was an unusual boost from the government; noneducational contractors have not received this type of guidance ("Colleges Must Have . . ." 1978). The fact that it was produced may indicate that college administrators have made a case that colleges are significantly

different from other employers and therefore require special government consideration.

Title IX—Title IX of the Education Amendments of 1972 is a legacy of the 1960's concern for social justice; it is patterned after Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race or ethnic origin in education agencies and institutions. It reflects a more recent public consensus that sex discrimination must be prevented. Title IX provides:

> No person in the United States shall, on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance (§ 901 (a)).

With certain exceptions,* Title IX applies to every college and university in the country, since virtually all institutions enroll students receiving assistance under other provisions of the 1972 Amendments.

Title IX regulations, effective July 1975, require institutions to take several steps to insure nondiscriminatory treatment. *First,* the institution must prepare a written self-evaluation of its policies and activities to determine where any discrimination occurs. This had to be completed by July 1976. All areas of student life are included in this self-evaluation: e.g. admissions, financial aid, and educational programs and activities. *Second,* based on this self-evaluation, the institution must develop a plan detailing modifications and remedial actions that need to occur in order to eliminate discriminatory policies and practices, and to overcome the effects of past discrimination. *Third,* the regulations require the institution to assign at least one employee the responsibility for coordinating the institution's Title IX compliance efforts and for investigating any complaints of noncompliance or violation of the Title IX regulations. And *fourth,* institutions must develop and adopt grievance procedures for students and employees to deal with charges of Title IX violations.

Section 504—Like Title IX, Section 504 of the Rehabilitation Act of 1973 is another federal effort to insure that concepts of nondiscrimination and social equity are extended to a group in society that has suffered from discrimination. Section 504 provides:

*These are certain religious institutions, military schools training students for the armed forces, the admission programs at private undergraduate colleges, and single-sex public institutions.

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

The regulations implementing Section 504 ("Nondiscrimination on the Basis of Handicap . . ." 1977) require institutions to follow the same actions to eliminate discrimination for handicapped individuals as they did for Title IX: self-evaluation; modifications and reform; a compliance officer; and grievance procedures. Similarly, these regulations reach into all aspects of student life.

Compliance

In theory, the relationship between federal agencies and higher education is voluntary; all colleges have the option to refuse aid. If they were able to do so, they would not have to abide by the provisions of the laws discussed here. But, in fact, as Columbia University's President William McGill has observed, circumstances probably force "voluntary" participation for virtually all institutions:

> The financial pressures experienced by Columbia during the last fifty years have forced us to search for new sources of current income. Accordingly our partnership with the federal government was not entirely voluntary. . . . During the 1950's Columbia University crossed a fundamental threshold. . . . During this period and for the first time in our long history, yearly infusion of federal resources became absolutely necessary for our operation and our survival (McGill 1976, p. 4).

This "yearly infusion" involves significant sums of money. For example, estimated federal funds for higher education in 1978 are more than $10.8 billion. This figure includes: more than $8 billion for basic higher education support; nearly one-half billion dollars for all loans; and $2.3 billion for applied research and development (Vance and Lind 1978, p. 159).

Given this massive dependence on federal funds for their continued operations, colleges and universities are particularly vulnerable to threats that the funds may be discontinued. The suspension of all or some portion of federal monies may occur if HEW's Office for Civil Rights (OCR) finds that an institution has not complied with civil rights requirements in one or more of its programs. This approach to enforcing compliance has been criticized both by the higher education community because it harms those sectors of an academic community that are in compliance with civil rights requirements and by protected groups because suspension is such a serious step that the

government has never totally cut off funds from an institution.*

In a very real sense, however, there are interim procedures that are used to achieve compliance. These are the protracted negotiations involving federal investigators and campus representatives over whether institutional compliance efforts meet federal standards. These negotiations may serve as a goad to institutional compliance because they are costly to conduct and may in fact delay the receipt of some federal funds. Protected groups, such as women, charge that the negotiating process delays and has been used to deny equitable treatment to the protected classes. This section examines higher education's experiences with compliance procedures, as they have occurred under the Executive Order, Title IX, and Section 504.

Executive Order 11246, As Amended—Federal investigators in HEW's Office for Civil Rights enforce Executive Order 11246 through the compliance review process and investigation of complaints. Under the review process, investigators visit institutions to determine whether an affirmative action plan has been developed that meets Revised Order No. 4 requirements and whether the institution is implementing its plan. Investigators also visit institutions to investigate complaints of noncompliance with the Executive Order. OCR has frequently been criticized by colleges and women's organizations for its alleged mismanagement of both these enforcement processes. Criticism focuses on several major areas:

(1) Notification of a review—OCR noitfies an institution in writing that it will be subject to a review within three to four weeks. Institutions contend that they need more time to prepare for the review; women's groups argue that they are not notified of the review and therefore are deprived of the opportunity to furnish HEW with relevant information.

(2) Burden of proof—Generally, the woman or group filing a complaint does not have to provide an extensive amount of information to compel HEW to begin an investigation. Administrators therefore

*HEW took a different approach to enforcing compliance under Title VI of the Civil Rights Act of 1964 during 1978. It began administrative proceedings in March 1978 to deny federal funds to the University of North Carolina, although negotiations for a desegregation plan required under Title VI of the Civil Rights Act of 1964 were well underway. HEW deferred "in a carefully targeted and limited fashion—consideration of future applications for HEW funds . . . *if* those new federal funds would contribute to continuing segregation" (Califano 1978a, p. 6. Emphasis in original). Direct aid to students in the North Carolina system was not affected. By May 1978, the University of North Carolina submitted a plan for compliance that was acceptable, and eligibility for federal assistance was restored (Califano 1978b).

feel that at the beginning and during the course of the complaint process they bear an unfair burden of proof. HEW, however, denies that there is a presumption of guilt or innocence when a review is initiated (Shulman 1972).

(3) Access to personnel records—HEW and the universities have experienced their greatest conflict over the on-campus investigation process that is the backbone of compliance review. The universities question HEW's right to have full access to personnel records. HEW contends that it derives this authority from the Executive Order itself, which states:

> The contractor . . . will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders (Executive Order 11246, (B) (202) (5)).

The pre-award review process for recipients of large government contracts may also present difficulties that affect all aspects of an institution, although contracts may be pending with only one sector. For example, the University of California at Berkeley was involved in a controversy with OCR in May 1978 over its certification for eligibility to receive a $1.5 million, Office of Naval Research contract. At issue were the department of history's refusal to provide information on all people who wrote letters of recommendation, and the art history department's refusal to let investigators copy records relating to a possible case of sex discrimination (Fields 1978a). Because OCR believed it could not determine compliance status without this information, the university was threatened with the disruption of research at its Naval Bioscience Laboratory, which needed the contract to continue operating. Under an "interim agreement" between OCR and Berkeley, reached one week after the deadline for compliance certification, OCR agreed not to copy personnel files on job applicants and the university obtained permission to disclose the sources of letters of recommendations. The contract was then awarded (Fields 1978b).

OCR and higher education institutions also have clashed in the pre-award review process, providing a classic example of bureaucratic procedural problems. Early in June 1975, OCR told twenty-nine universities that it would withhold more than $65 million in federal contracts unless they produced acceptable affirmative action plans by the end of the fiscal year on June 30. Alternatively, OCR suggested that these institutions could promptly receive their contracts if they

adopted a model affirmative action plan, which was widely believed to be based on the University of California at Berkeley's plan (Fields 1975a). OCR explained that the haste involved in the review process occurred because it had only recently learned that these institutions were to be awarded the contracts. After extensive protest from the presidents of the affected universities, the Department of Labor and HEW developed an arrangement under which most of the institutions received their contracts and the universities agreed to submit new affirmative action plans within thirty days of the agreement. Other affected institutions involved worked out separate agreements (Fields 1975b).

Dissatisfaction with OCR's enforcement proceedings on Title IX and the Executive Order resulted in a suit by the Women's Equity Action League against the Department of Health, Education, and Welfare. In a negotiated agreement reached in December 1977, HEW adopted timetables and procedures for handling individual complaints, compliance reviews, and pre-award reviews for contracts over $1 million.* OCR also announced, among other matters, its intention to process 120 sex discrimination complaints and to conduct a minimum of fifty-five on-site compliance reviews, including pre-award reviews under the Executive Order.**

From this review of the compliance process, it appears that the higher education community as a whole has not had extensive experience with compliance reviews. Van Alstyne and Coldren (1976) theorize that the brunt of compliance activity has been borne by a limited number of colleges and universities. They observe:

> Large and prestigious institutions, whether public or private, tend to be more visible to the public and to the federal enforcement agencies than are small and less prestigious institutions; consequently, they come sooner under greater pressure to make active compliance efforts. The less visible institutions tend to follow the paths developed by the more visible (p. 16).

But even higher education's limited experience with the compliance process is revealing. It indicates that the compliance process does not proceed in an orderly fashion, but rather is subject to the uncertain reactions of the different interest groups involved. In fact, it is a political process and requires institutions and different

*Civil Action No. 74-1720 in the District Court for the District of Columbia, December 29, 1977.

**This agreement is reflected in OCR's "Annual Operating Plan for FY 1978 ("Nondiscrimination in . . ." 1978).

interest groups in the higher education community to master new political skills. The compliance process therefore engages a substantial number of people in academic life in activities that are frequently acrimonious and tedious. In this way, the compliance process itself intrudes on the academic life of the university.

Title IX—Title IX regulations ("Nondiscrimination on the Basis of Sex" 1975) establish the federal intention to leave to the institutions the initial responsibility for determining their compliance status and for initiating remedial and affirmative action to achieve compliance. Federal oversight and intervention is the final step in the monitoring process, following institutional action. The purpose of this approach appears to be to keep federal involvement in Title IX procedures to a minimum. In his testimony before the House Subcommittee on Postsecondary Education on Title IX, Caspar Weinberger, then Secretary of Health, Education and Welfare, explained that the regulations were written to provide for institutional action:

> . . . because we believe voluntary enforcement and provisions that focus on voluntary enforcement and more or less direct the colleges to get enforcement of this kind of [sic] their own are preferable to setting up a large Government police force to go in and gather its own data and its own rather rigid enforcement (Weinberger 1975, p. 465).

The regulations make the self-evaluation process the major method for achieving compliance with Title IX. The federal government's involvement with Title IX enforcement occurs in one of two ways. *First*, by September 30, 1976, OCR was to receive and then review an institution's "assurance" form. This is a government checklist by which an institution indicates its compliance status in the areas of: campus grievance procedures; appointment of a Title IX coordinator; status of the self-evaluation; institutional modifications to achieve compliance; and remedial activities (Shulman 1977). Institutions that did not return assurance forms or did not complete them satisfactorily are subject to compliance investigation. *Second*, OCR is required to investigate and resolve complaints of Title IX violations that are filed against an institution. As a final step in this enforcement process, OCR may discontinue federal funds to an institution.

As with affirmative action compliance, women's groups have been extremely dissatisfied with OCR's Title IX enforcement program.*

*Title IX enforcement issues were an important aspect of the Women's Equity Action League suit against OCR.

The National Coalition for Women and Girls in Education, an organization concerned with the implementation and enforcement of Title IX, has charged HEW with widespread failure to implement the law's regulations on the elementary-secondary and higher education levels (National Coalition 1978).* For example, the Coalition contends that

> • For every complaint HEW has investigated, and resolved, the agency has found 'administrative' reasons for closing another case without investigation or a decision based on its merits.
>
> • The agency, on its own, has checked for and acted on sex discrimination in just a handful of the nation's 16,000 school districts and 3,500 colleges and universities (p. 2).

In response to the Coalition's charges, Secretary Califano admitted:

> in the past, Title IX has not been adequately enforced. When this Administration took office in January 1977, we faced an appalling legacy of unreviewed complaints, inadequate staffing, and little development of policy (Califano 1978, p. 1).

He also reported that these problems were being dealt with, but did not give details, and he promised to review the issues raised by the Coalition.

Section 504—At this writing, efforts to obtain information from the Office for Civil Rights on the procedures that will be followed to monitor and enforce compliance with Section 504 have proven fruitless. It seems fair to surmise, however, that OCR will conduct 504 compliance in a manner similar to that followed for Title IX.

Effects on Institutional Life

Critics of federal efforts to achieve social goals in higher education through the regulatory process charge that the quality of academic life is being impaired by colleges' needs to respond to requirements that are insensitive to or inappropriate for their organization, procedures, and financial circumstances. Moreover, these requirements are costly to the institution, making their implementation seem doubly burdensome.

Executive Order 11246, As Amended—Critics have generally regarded

*See also, Project on Equal Educational Rights, *Stalled at the Start, Government Action on Sex Bias in the Schools.* Washington: NOW Legal Defense and Education Fund, 1977, 1978.

Revised Order No. 4 as the first and perhaps most invidious example of how federal regulations intrude upon colleges' independent aca-

demic planning and decisionmaking processes. Since the Revised Order's initial application to colleges and universities, its critics have charged that the regulations tend to diminish independent professional judgment in matters of hiring and promotion of faculty (Shulman 1972).

This charge is bolstered by anecdotal reports of white male academics who are turned down for faculty positions because they did not meet the goals of the institution's affirmative action plan; the assumption in these reports is always that the female or minority scholar hired instead was less qualified for the position. Such treatment of qualified applicants is not permissible under Revised Order No. 4.

But reports of occasional abuse do not constitute evidence that Revised Order No. 4 has harmed independent academic judgment overall. In fact, the academic community has not produced hard evidence that such deterioration has occurred. As it happens, there are indications that the academic community has learned to adapt to the affirmative action regulations and to develop procedures that make the hiring process more equitable and that open it up to qualified candidates who might not have been considered previously (*Making Affirmative Action . . .* 1975). After surveying affirmative action policies and procedures at 132 colleges and universities, the Carnegie Council on Policy Studies in Higher Education reports:

> the federal initiatives of the 1960s and early 1970s . . . were absolutely essential. They were among the initiatives that started colleges and universities on the road to developing their own policies and plans and to creating their own internal machinery. . . . New directions have been identified. Attitudes have been changed, behavior modified, new habits introduced. (*Making Affirmative Action . . .* 1975, pp. 4-5).

On the negative side, there is no doubt that affirmative action requirements present institutions with ongoing and often burdensome bureaucratic procedures to document institutional compliance. Sometimes these procedures are mandated by the regulations, but they are also developed by institutions themselves to make the regulations applicable to their situations, or to provide cautious institutions with a means of assuring that they can document compliance efforts. These internal procedures require considerable amounts of faculty and staff time. At the University of California at Berkeley, for example, every faculty appointment is subject to administrative review:

> a department must report to the Faculty Assistant [in the office of the Vice Chancellor for Faculty Affirmative Action] the number of appli-

> cants, those with whom further correspondence ensued, those invited for interviews, those interviewed, and those who made the final list from which the selection was made. The report must explain why the department has recommended its first choice over the other candidates. If the first choice is not a minority person or a woman, the department must explain why such individuals on the list were not selected. If minority persons and women were not on the final list, the department must explain why . . . (Bowker 1977, p. 20).

Such detailed procedures may delay a decision on hiring or promotion for some time, and they may in fact be counter-productive in some instances. For example, Bowker reports that one faculty position was not filled by the desired female candidate because affirmative action procedural requirements meant a three-month delay on a final decision, and the candidate had taken a position at another campus in the interval between the initial decision to hire her and final approval by the university.

Executive Order 11246, as amended, may also affect institutional conditions because it may be costly to administer an affirmative action plan and because an institution may have to compensate faculty for past discrimination in salary and rank. But information on the costs involved is difficult to obtain for several reasons. *First*, Revised Order No. 4 costs are classified with affirmative action costs involved in other federal programs, such as the Equal Pay Act of 1963, since such programs are often administered from the same office. *Second*, it is difficult to divide the costs involved in an affirmative action program between what is absolutely mandated by the regulations and what other actions the institution may take to protect its compliance status because it is unclear about all actions that may be required. *Third*, it is difficult to compare costs nationally because institutions are in different stages of compliance when they begin their affirmative action programs, so initial costs are different. And *fourth*, compared to other federally-mandated obligations, affirmative action costs may be more or less important in the total institutional budget.

This last point develops from the results of a study of federally-mandated social programs conducted in 1976. Van Alstyne and Coldren (1976) examined the cost impacts of twelve federally mandated social programs on four private and two public higher education institutions from 1965 to 1975. Affirmative action costs were lumped together in one figure with other equal opportunity (EEO) costs. As a percentage of total costs of federally-mandated social programs, EEO costs were significantly higher at some colleges than others for the 1974-75 academic year. These percentages depended in large part

on whether the institution participated in the Social Security system. For example, EEO costs at a public state university, which does not have Social Security, were 64 percent of the total costs of federally mandated social programs; but EEO costs at a private university with a hospital made up only 2 percent of the total costs, while Social Security accounted for 70 percent of the costs.

Title IX—The self-evaluation required under Title IX compels colleges and universities to reexamine policies and practices that may be at the heart of an institution's academic life. The regulations require the institution to alter any practices that have a discriminatory impact on either sex. Thus, Title IX has the potential to make major changes in academic life.

For example, in the area of recruitment and admissions, covered institutions may not establish numerical or percentage quotas for either sex in determining who may be admitted (45 CFR§ 86.21 (b) (i)), nor may they allow an applicant's status as a spouse or a parent to affect an admissions decision (45 CFR 86.2 (c) (1)) ("Nondiscrimination on the Basis of Sex" 1975).

In the area of financial assistance, colleges also may have practices or programs that are discriminatory. Under Title IX, financial assistance from *private* as well as public sources are subject to scrutiny. The regulations require that "students [be] selected for award of financial assistance on the basis of non-discriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex" (45 CFR § 86.37 (b) (2) (i)). Colleges and universities must therefore rank their students for assistance according to nondiscriminatory criteria, such as academic merit or financial need, and must award funds based on that ranking. If, in the process of allocating funds, an institution finds itself left with only gender-restricted funds to award, while there remain members of the opposite gender who are due to receive assistance under nondiscriminatory criteria, the institution must then "locate additional funding for the [opposite gender] or cease to give awards at that point" ("Nondiscrimination on the Basis of Sex" 1975, p. 24133).

But critics of federal regulation under Title IX have not been concerned with federal intrusions in areas such as those cited above. Instead, debate on Title IX has focused on one major issue: athletics. On this issue, Title IX may challenge an institution's or a department's beliefs about the place of athletic programs. It is widely recognized that men's and women's athletic programs frequently have had different origins and therefore differ in their goals and structure.

Many men's intercollegiate athletic programs developed separately from their college physical education programs, and have concentrated on national or regional competitions and spectator sports. In contrast, women's athletic programs generally have been more closely linked to physical education programs and emphasize "instruction, student participation and lifetime sports" (Dunkle 1976, p. 136). In establishing equity for separate sports programs, or in merging programs, administrators are concerned that the philosophy of one program, generally the women's, will be lost.

A large part of the problem results from the greater expenses already entailed in supporting men's revenue-producing sports. Early on in compliance efforts, some institutions, such as the University of Minnesota, wanted to exclude revenue-producing sports from its compliance calculations. If this is done, the actual differences in program expenses are not evident (Shulman 1977). In May 1978, however, HEW reaffirmed that revenue-producing sports are covered by Title IX and must be included in an institution's efforts to achieve equity in male and female athletic programs (Fields 1978, p. 16), and, in fact, the University of Minnesota "long ago quit excluding the revenue-producing sports from [its] analyses" (Engstrand 1978). Instead, the university has directed its efforts toward equalizing women's intercollegiate athletic programs based on their per capita participation rate. Using this approach, it expects to achieve full compliance with Title IX by 1980-81, with a projected budget for women's athletics of $1,591,250 (Engstrand 1978).

Section 504—It is too early in the history of Section 504 to know in what ways it may influence academic life. As in Title IX, however, the self-evaluation required by Section 504 regulations calls for careful consideration of how institutional policies and practices may wrongfully discriminate against qualified handicapped individuals.

"Qualified" is a key term in this self-evaluation. A handicapped person is considered "qualified" when:

> (1) with respect to employment, a handicapped person [can] with reasonable accommodation, . . . perform the essential functions of the job in question; and
>
> (2) with respect to postsecondary and vocational education, a handicapped person . . . meets the academic and technical standards requisite to admission or participation in the institution's programs and activities. (Biehl 1978, p. 14).

Under these criteria, for example, handicapped students may not be

barred from participating in an academic program because of requirements that are irrevelant to their ability to learn: e.g. "prohibition of tape recorders or braillers in classrooms or dog guides in campus buildings." (Biehl 1978, p. 39)

Moreover, colleges cannot avoid changes on their campuses by making special arrangements for handicapped students only. For example, Biehl (1978)* advises that institutions cannot avoid making renovations on their campuses by developing consortia arrangements only for handicapped students:

> Institutions in a particular region could not . . . avoid renovation work by having students with mobility impairments attend institution X for biology, institution Y for chemistry, and institution Z for physics, unless all students of the institution were a part of the consortium for these fields of study (p. 39).

But Section 504's greatest potential for influencing campus life lies in its requirements for providing handicapped individuals with "accessibility" to all institutional education programs and activities. College administrators have generally interpreted this requirement to mean that they must provide complete structural accessibility. They have therefore been particularly concerned about the cost of providing accessibility to handicapped students in buildings built before 1968.**

Section 504 does not require institutions to provide a barrier-free environment for handicapped individuals. It requires that:

> all programs and activities of an institution, when viewed in their entirety, must be accessible to handicapped persons . . . *Structural changes are required only where there is no other feasible way to make a program or activity accessible* (emphasis in original). (Biehl 1978, p. 21).

Cost estimates from George Washington University and the University of California at Berkeley provide some understanding of how institutions perceive their Section 504 problems. For George Washington University (1976), remodeling costs to make all of its buildings accessible would be very high—over $5 million. This figure includes more than $4 million just for providing accessibility to thirty-seven

*See also. *Recruitment, Admissions, and Handicapped Students. A Guide for Compliance with Section 504 of the Rehabilitation Act of 1973.* Washington: The American Association of Collegiate Registrars and Admissions Officers and the American Council on Education, 1978. HE 010 166. (Nov. RIE). MF-$0.98; HC-$13.86.

**Buildings constructed in conformity with the Architectural Barriers Act of 1968 (42 U.S.C. 4151) should meet handicapped individuals needs.

rowhouses; $800,000 in remodeling costs are allocated to buildings that are now partially accessible and buildings that are completely inaccessible. George Washington University finds the prospect of remodeling its rowhouses "economically infeasible and unacceptable," but it is uncertain what the federal government will require (p. 75).

For the University of California at Berkeley (Bowker 1977), it is difficult to separate remodeling costs for complying with regulations from costs involved in already-planned construction and remodeling. Among the figures reported: a ten-year capital construction project for the handicapped involving annual expenditures of $500,000 per year will now probably have to be completed by 1980; $148,000 has been spent on remodeling dormitories to accommodate disabled students who formerly were housed in a section of the hospital; and total costs for installing elevators is estimated at $2 million.

Concerned about these substantial costs, the higher education community has been attempting to have Title VII ("Construction of Academic Facilities") of the Higher Education Act funded by Congress so that renovation for the handicapped can occur with less hardship to institutions. In a memorandum to members of the House of Representatives, Charles Saunders, Director of Governmental Relations for the American Council on Education, explains the institutions' case:

> Removal of architectural barriers to access for the handicapped is one of the highest priorities for colleges and universities. . . . The cost of compliance for the higher education community can reliably be estimated at approximately $1 billion. . . . Because the needs in this are extensive, it is important that the federal government help . . . (Saunders 1978).

At this time, Congress has not granted any appropriations for renovation under Title VII.

Summary

As recipients of federal financial assistance, virtually all colleges and universities are subject to federal laws and regulations designed to achieve equal educational and employment opportunities for all segments of society. Refusal to comply with these federal obligations could result in partial or total loss of federal funds. Most higher education institutions, especially the largest and most influential, could not afford such a loss.

Colleges and universities have been aware of their position since about 1970, when Executive Order 11246, as amended, began to be applied to college and university contractors. This event marked the beginning of widespread debate over how federal regulations may in-

trude on and impair academic processes. For the Executive Order, there is anecdotal evidence available that professional judgment has been influenced by the requirements of affirmative action, but the academic community has not provided documentary evidence of widespread abuses. Moreover, it is difficult to know what the cost impacts of affirmative action are. Here again, there is a need for more hard evidence on the influence of affirmative action requirements. For Title IX and for Section 504, there are few indications that these laws have influenced significantly the manner in which internal academic life is conducted. But the costs involved in achieving compliance under these laws may be major and may cause severe financial pressures for colleges and universities.

The compliance process itself seems to create major problems for colleges and universities. Compliance enforcement has been unpredictable, leaving both institutions and protected groups dissatisfied with the results of equal opportunity programs. The brunt of the confusion has often been borne by the larger colleges and universities, which are the most visible sector of the higher education community, and also receive a sizeable share of federal aid. They are often the first to respond to and experience the effects of new federal legislation for higher education.

The College As Employer

The higher education community has become more sensitive to its financial obligations as an employer because of legislation passed during the 1970's. New laws or changes in old ones have escalated the cost of meeting federally mandated business obligations to an alarming degree. Because of their distinctive financial structure and their employment policies and practices, higher education institutions cannot absorb these costs using the methods available to traditional profit-making enterprises. The drain on income that has resulted inevitably means that higher education institutions are constrained in their efforts to spend money on academic concerns.

Therefore, the federal policy of treating universities as traditional employers now merits most serious attention at all levels of academic administration. Furthermore, this policy contributes to a problem the higher education community believes it has in its relationship with the federal bureaucracy, i.e., that the federal government is often insensitive to the unique characteristics of the academic community, and consequently its employment requirements affect it more than the traditional business sector; e.g. colleges fear they will have a particularly hard time paying for increased Social Security costs because, unlike profit-making businesses, they are limited in their ability to pass on higher costs to their "customers."

Of all the federal employment-related laws affecting higher education, three have received particular attention in recent years. These pose some of the most serious long-range financial and policy implications for higher education. They are the Social Security Act of 1935, as amended, the Employee Retirement Income Security Act (ERISA) of 1974, and the Age Discrimination in Employment Act of 1967, as amended.*

Applicability of Social Security, ERISA, and ADEA in General

As employers, colleges and universities differ from traditional businesses because they are nonprofit enterprises. Furthermore, in many cases, public higher education institutions are classified as agencies of the state, a distinction not shared by most employers. These char-

*Executive Order 11246 might appropriately be discussed in this chapter. It was placed in chapter I because issues have largely focused on academic questions.

acteristics make higher education institutions theoretically exempt from one or more of the three personnel management laws discussed here. However, colleges and universities provide their staff with employee benefits similar in kind to those offered in the profit sector of the economy, and therefore they have to abide by the regulations applicable to that sector.

For example, participation in the Social Security system is optional for all nonprofit organizations, but most institutions cannot afford a private pension system that could provide benefits to employees equivalent to those gained from Social Security (Magarrell 1978). Therefore, the large majority of colleges and universities do participate: virtually all private colleges belong to the system, and about two-thirds of all public employees of state and local governments have Social Security coverage (King 1978). Dissatisfied institutions do have the option of dropping their coverage, but once they take such a step, they cannot participate again. Their employees would lose coverage after five years and would have to wait five years before getting Social Security coverage with a new employer (Magarrell 1978).

In addition to Social Security coverage, virtually all colleges and universities offer employee benefit plans. Since 1974, the Employment Retirement Income Security Act has regulated the operation of employee benefit plans in the private sector. ERISA does not regulate public employers, even though they may use a private plan. Therefore, public institutions, as agencies of state or local governments, are exempt from ERISA. For higher education, this dichotomy between the public and private sectors means that the approximately 90 percent of all independent institutions using TIAA-CREF, a private benefit plan, are covered by ERISA, but the one-third of all public institutions using this same plan are exempt from coverage (King 1978). Under the ADEA, however, public and private institutions are equally affected. As amended in 1978, the ADEA raises the mandatory retirement age for most employees in the private and public sectors from sixty-five to seventy years, effective January 1, 1979. But in higher education institutions tenured faculty members will have to retire at the current mandatory age limit on their campus until July 1, 1982, when they will also become protected by this law.*

*Of about 900 institutions covered by TIAA-CREF, only 60 have mandatory retirement at age 70; about 57 retire faculty at age 68; and the remainder use age 65 for mandatory retirement (Jenny 1974).

Problems Under Social Security, ERISA and ADEA

Colleges and universities do not know the long-run economic and qualitative impacts of the recent cost escalations in meeting Social Security, ERISA, and ADEA requirements. Each of these laws presents its special problems. Colleges fear they will be more hard-pressed than ordinary business enterprises to meet their expenses "[to] the extent that [they] are more labor intensive" (Van Alstyne and Coldren 1976, p. 19). Van Alstyne and Coldren observe that the costs of most federal personnel programs are calculated on a per-employee basis. Therefore, institutions that "maintain low student-faculty ratios, or carry out research or have hospitals or extensive physical facilities, residences and grounds . . . will necessarily incur large costs for employee-related programs" (p. 16).

Social Security—Of the three laws under consideration, Social Security accounts for the largest part of institutional budgets going to federally mandated social programs. Van Alstyne and Coldren report that Social Security's share of such costs for 1974-75 ranged from a low of 48 percent at a private university with a hospital and an enrollment of 10,000 to a high of 70 percent at a private university with a hospital and an enrollment of 8,000. For all six institutions, Social Security costs were slightly more than $5 million in 1974-75.

Another study of Social Security (Minter and Fadil 1978) projects the cost increases that private institutions will have to bear from 1979 to 1987 under the new Social Security taxes effective January 1, 1979. This survey reports on 77 independent colleges and universities considered representative of the 901 institutions in Carnegie Classification categories 1, 2, and 3, excluding two-year colleges and specialized institutions. Of these 77 institutions, the *average* institution's increase in administrative faculty and staff salary costs during 1979-1987 will be $440,755 more under the new law. For all 901 institutions, Minter and Fadil calculate that *aggregate* employer Social Security costs will increase by $397,120,000 for the eight-year period.

The higher education community regards Social Security taxation as a particularly heavy burden because of the magnitude of this cost escalation, and the fact that the most dramatic tax increases are for salaries in the $20,000 to $30,000 range (Policy Analysis Service 1978). Therefore, college and university officers are especially interested in reforming the Social Security system by holding down taxes on employers and employees, and using general revenue financing to fund Social Security benefits. Colleges and universities would gain from such a change because as nonprofit organizations they do not con-

tribute to the general revenue fund (Policy Analysis Service 1978). Currently, as one researcher notes, "it is ironic that institutions exempt from taxes on income, property, and sales do pay the [payroll] taxes that provide the 'fastest growing source of Federal revenue'" (Scott 1978, p. 37).

Some college administrators have expressed interest in dropping out of the Social Security system altogether because of its increasing cost over the next ten years (Magarrell 1978), but several factors make it unlikely that such a step will be taken (Finn 1978). Finn explains that since Social Security benefits are tax-free, it would be very costly for colleges to provide a plan offering equivalent after-tax benefits. Moreover, Social Security presently has an open-ended cost-of-living escalator that is not usually found in private plans; and even when such a private plan option is available, it is very costly to employers and is usually limited to annual increases of four percent.

ERISA—The Employee Retirement Income Security Act of 1974 (ERISA) has complicated the administration of employee benefit plans in higher education. ERISA is intended to guarantee employee plan solvency and to insure that employees understand any benefits (retirement, illness, disability, death, unemployment, vacation, and training) to which they are entitled (Heller 1975). Compliance with this legislation requires administrators to master numerous reporting requirements of the Department of Labor and the Internal Revenue Service, as well as to distribute annual and other reports to all employees covered by benefit plans (Heller 1975).*

In addition to these reporting requirements, personnel offices must adapt ERISA eligibility regulations to the unique characteristics of faculty employment structures. For example, ERISA requires that employees be credited with a full year's work for retirement plan eligibility purposes when they complete 1,000 hours of service within a twelve-month period. For colleges, the difficulty lies in defining "hour-of-service" for faculty members whose schedules are not measured by normal industrial standards. The Department of Labor has developed several alternative methods for calculating a year of service for such atypical employees. Of these methods, TIAA-CREF (1977a)

*However, if an institution offers a "'reasonable choice'" of one or more tax-deferred annuities (TDA) to its employees, the college need not meet annuity reporting requirements. ERISA defines a TDA as a "program under which all premiums are over and above any required retirement plan contributions and are remitted through salary reduction" (TIAA-CREF 1977c, p. 2). "Reasonable choice" is established by meeting specific ERISA criteria.

recommends one based on "elapsed time," a method that is "most appropriate where the institution wishes to extend eligibility to all staff members in an eligible class whether part-time or full-time" (TIAA-CREF 1977a, p. 11). Under this method

> . . . an employee is credited with a period of service that is equivalent to a year of service on each anniversary of his or her employment date. There are no minimum hours or teaching load requirements and hourly records need not be kept. . . . This method substitutes the concept of an elapsed period of service for a year of service and equates the two on the basis of a twelve-month period (TIAA-CREF 1977a, p. 11).

Colleges and universities may also find that ERISA hampers their ability to provide employees with certain financial advantages. In testimony before a House of Representatives' committee studying pension policies, TIAA-CREF chairman William Greenough reported that ERISA limits the amount employers can set aside for their employees on a tax-deferred basis. This limit comes on top of one imposed by the IRS and, consequently,

> ". . . colleges and universities were handicapped in their efforts to provide supplemental income for persons who wished to retire early, or to augment inadequate prospective benefits" (TIAA-CREF Chairman 1978).

Mandatory Retirement—Since the passage of the 1978 Amendments to the Age Discrimination in Employment Act of 1967, college officials have been concerned that the new mandatory age limit of 70 will create additional financial burdens for their institutions because they will have to employ high-salaried faculty over a longer period of time. Moreover, they have been uncertain about this law's implications for long-range institutional planning and development.

These concerns, however, have largely been based on a vacuum of knowledge on long-term retirement trends and faculty profiles. Colleges have until 1982 to develop a data base for their needs and to observe the impact of this legislation on other sectors of the economy before they are subject to its requirements.

Current retirement trends are difficult to interpret. Some recent analyses indicate that retirement before the mandatory age is occurring at an increasing rate. TIAA-CREF records indicate that early retirement is an increasing long-term trend: in 1966, 16 percent of participants in the plan who began benefit payments were below age 65; in 1976 this figure had changed to one-third of all participants (McCormack 1978). A study of the University of California faculty during 1968-1975, when the mandatory retirement age was 67, revealed that 40 percent of full-time male and 72 percent of full-time female fac-

ulty retired before age 67. At the State University of New York, whose mandatory retirement age is 70, more than two-thirds of the faculty retiring between 1973 and 1977 were age 65 (McCormack 1978).

While these trends suggest that the new law may only minimally affect faculty retirement, recent opinion polls indicate an opposite conclusion. A 1977 Harris opinion poll found that a margin of 86 percent to 12 percent of those surveyed agreed that "nobody should be forced to retire because of age, if he or she wants to continue working and is still able to do a good job;" a similar poll in 1974 had found that a ratio of 45 percent to 40 percent believed it was a "good thing that the age at which people are required to retire has become younger in recent years" ("'No' Vote . . ." 1977).

A survey of faculty opinion on early retirement found faculty members interested in continuing to work past age 65, particularly if the mandatory age limit were increased. In fact, mandatory age limits themselves appear to affect retirement decisions: at institutions where the retirement age is 65, 10 percent of the faculty would choose to work beyond age 67, while 29 percent would choose to work past 67 at colleges that have an age 70 limit (Ladd and Lipset 1977). Another factor is that no one can predict what impact continuing inflation will have on retirement decisions that may be delayed in order to garner more earnings and higher pension benefits (Heim 1978).

To forecast the turnover rate for tenured faculty, college officials will need information on national and campus-based faculty age profiles, since most new faculty openings result from retirements (Heim 1978). To date, only a few studies are available, but their results generally appear to agree on the current faculty age distribution. Corwin (1978) bases his findings on a 41 percent response rate from a representative 10 percent sample of all junior colleges, four-year colleges, and universities. Of these, more than half have a mandatory retirement age of 65, 15 percent age 70 as mandatory, and 12 percent retire faculty between ages 66 and 69; only 3 percent of these institutions have no mandatory retirement policy. Corwin reports that the median age of full-time tenured faculty is 48, and about 25 percent of this group is over age 55. For nontenured faculty the median age is 36, and about 6 percent are over age 55. Using different data sources, Patton, Kell and Zelan (1977) also find that nationally, college and university faculty age distribution conforms to the norm, i.e., "there are greater percentages in the younger ages, with decreasing proportions in the older age groups—with no substantial bulges of faculty members at any age" (p. 177). Their information is based on an anal-

ysis of the 1972-73 American Council on Education's survey of faculty and the data from the 1975 Carnegie Survey of American Academics.

This faculty age distribution research indicates that a higher mandatory age limit will not necessarily have a *substantial* effect on total staff at any given time. However, higher education officials and researchers still fear that the higher age limit may severely constrain institutions, financially and qualitatively, Peggy Heim (1978) argues that institutions, depending on how they respond to mandatory retirement, will experience adverse economic fallout from the new legislation:

> [Mandatory retirement legislation] may increase costs and reduce institutional viability. While it may improve the economic position of the older individual, [it] may indirectly restrain wage and salary increases or impose constraints on the quantity and quality of fringe benefits (p. 7).

Qualitatively, there is a concern that institutions will not be able to meet their long-run needs in current and new disciplines because an oversupply of tenured faculty in some fields will limit flexibility in staffing. Heim (1978) explains:

> . . . the problem is more than one of total turnover, but also [of] the segments involved. The imbalance between the staff the institution has and the staff it needs tends to increase with the length of time on the staff (Heim 1978, p. 7).

The Age Discrimination in Employment Act may also affect hiring decisions when a faculty slot does become available. Here, institutions need to establish that a decision was based on "the persuasiveness of reasonable factors other than age . . . or of age as a *bona fide* occupational qualification for the job" (Haslam 1975, p. 331). Problems may crop up. For example, the University of California at Berkeley reported on an ADEA conflict at its campus:

> An omen of things to come may be a dispute that erupted in one department this year. The department had a faculty position to fill, and there was disagreement over whether to seek an experienced person at the full professor level or a less experienced one at a lower level. In view of the department's existent age profile, the decision was to go for the latter, whereupon one of those on the losing side charged that the decision constituted age discrimination. The eventual prospect of departments having one of their cherished mechanisms for retaining intellectual vitality constrained could indeed prove to be serious (Bowker 1977, p. 66-67).

The potential problems presented by the new retirement legislation indicate a need to examine methods of reliable prediction and planning for college faculty retirements. So-called "early retirement

plans" may meet this need. Such plans are designed to encourage employees to retire early by offering financial compensation for foregone salary and/or Social Security and pension benefits. For colleges and universities, early retirements may alleviate the twin burdens of longer salary outlays at the higher end of the pay scale and constraints on long-range planning, which administrators fear may result from the new mandatory retirement legislation.

When considering an early retirement plan, administrators need to weigh the total cost of the plan against the benefits the institution expects to gain. In so doing, they are likely to conclude that an early retirement plan that is financially appealing to employees is not economical for the institution. But an institution may nevertheless find such a plan attractive because it offers flexibility in program planning by influencing employee retirement patterns in areas where changes are needed.

On the financial side, Jenny (1974) concluded from his study of the economic consequences of early retirement that

> . . . early retirement may indeed produce monetary savings *under certain conditions*, but that its merits are not chiefly in its financial advantages . . . early retirement, humanely entertained, will not bring monetary solace to colleges and universities. Quite the opposite: it may cost them money (Jenny 1974, p. 1) (emphasis added).

In Jenny's analysis, the crucial consideration for both employer and employee is the extent to which the employer will compensate the employee for income foregone by early retirement, because:

> [*early retirement*] *for higher education personnel will reduce pension benefits under all types of pension plans unless the employer is able and willing to offset all or part of the loss.* (Jenny 1974, p. 15) (emphasis in the original).

Jenny suggests that a "zero-cost solution," in which the employee is not replaced, is given severance pay, and is not compensated for any lost retirement income is only likely to occur in cases of dismissal or extreme financial exigency. Instead, colleges will have to examine options that result in added cost. These options may include one or more of the following approaches, listed in order of increasing cost to the employer: (1) lump-sum payment of the employer's pension contribution; (2) continuing payment of the pension contribution to retirement age; and (3) restoration of lost Social Security benefits. The employer also must add the cost of a faculty replacement, if needed, which may effectively eliminate any savings at all under an early re-

tirement plan. An early retirement plan may thus provide no real savings.

But as already noted, early retirement plans are appealing as a method of enhancing institutional quality and flexibility by encouraging more rapid faculty turn-over and replacement. Pattern, Kell, and Zelan (1977) believe that this advantage may be important.

> . . . early retirement . . . can have a significant *qualitative* impact in selected institutions and departments, by permitting a small number of significant new appointments, by facilitating the departure of a few individuals who desire to leave, and by creating a climate in which career options are broadened (p. iv) (emphasis in original).

Concluding Thoughts

Chapter one explored issues that have arisen in connection with equal educational and employment opportunity programs. Institutions do not quarrel with the goals of such programs, in fact these goals are compatible with higher education's mission to develop teaching and learning situations that further the educational achievement of all students.

In contrast, federal business laws and regulations affecting colleges and universities may operate at cross-purposes with their teaching-and-learning missions. Laws such as Social Security, ERISA, and ADEA were enacted to promote employee welfare, without regard to their impact on any particular enterprise. Higher education spokesmen do not deny the need for or the appropriateness of these programs. Rather, they contend that these programs impose such high expenses on their institutions that the primary teaching-and-learning missions may be impaired due to lack of funds.

In this connection, they urge that colleges and universities not be looked on as just one more sector of the nation's economy. Higher education institutions, as nonprofit organizations, are unwilling and unable to pass on to their "customers" the full cost needed to meet their expenses. Such a step would price most students out of the educational market, and ultimately create a decline in revenue.

Consequently, higher education finds itself in a triple bind: as employers colleges must meet escalating federal business costs; as nonprofit organizations, they are hard-pressed to raise the necessary funds to pay those costs; and as educational institutions, they are finding that inordinate amounts of funds, time, and employee activity are given over to meeting federal requirements that are irrelevant to their central educational mission.

Cumulative Problems with Federal Regulations

This chapter reports on three regulatory issues that are not the direct result of any particular regulation but rather are the cumulative result of experience with the regulatory process, especially within the last ten years. The subjects discussed are: administrative costs and changes resulting from regulatory requirements; the academic community's perception of a heightened adversarial climate on campus; and recommendations to improve the regulatory process so that it better serves the needs of the academic community. The kinds of regulations discussed in Chapters one and two—civil rights and employment-related obligations—are major contributors to the growth of the "umbrella" issues discussed here.

Administrative Costs and Changes

The effect of federal regulations on campus is most visible in the growth of administrative staff to meet federal reporting, documentation, and compliance monitoring requirements.* This growth has been an important item in college and university budgets:

> Between 1929 and the mid-1960's, expenditures for administration increased 21 times . . . from the mid-60's to the early 1970's, current fund expenditures by colleges and universities for administration increased by more than 30%, while expenditures for instruction increased by only 10% . . . and this was during a period when enrollments nearly doubled . . . (Scott 1978, p. 1).

While these "overhead" costs are significant, it may be extremely difficult to calculate them with precision. In a study of the impact of federal regulations conducted for the Sloan Commission on Government and Higher Education, Bowker (1977) reports:

> No attempt has been made to develop an elaborate method for computing the costs of federal regulations at Berkeley. To devise a method and apply it thoroughly would have required all the time available for the study, for a number of almost insurmountable problems are associated

*Colleges and universities must meet innumerable statistical reporting requirements in areas not discussed in this report (such as enrollment), and these may be complicated and burdensome. See, *A Report of the Commission on Federal Paperwork, Education*. Washington: Government Printing Office, April 29, 1977. ED 144 203. MF-$0.98; HC-$7.00.

with such an effort. Even the concept of "cost" is vague and variable

> and can be taken as a synonym for "expenditure" . . . to sort out just what proportion of each [multipurpose activity] is involved and to pro rate the expenditures accordingly would be most difficult (p. 378).

Nevertheless, some effort has been made in this direction. In an innovative study, Van Alstyne and Coldren (1976) discuss the costs associated with twelve federally-mandated programs* at six institutions: the College of Wooster, Duke University, Georgetown University, Hampton Institute, Miami-Dade Community College, and the University of Illinois at Urbana. Their study required the participating institutions to develop jointly a conceptual survey instrument, and to report all pertinent institutional data from 1965-1975. In this study, the authors

> . . . [made a fundamental distinction] between the total costs of an activity and the incremental costs specifically attributable to compliance with the federally mandated social programs. . . . As appropriate, the Task Force institutions allocated a portion of general overhead, taking care to avoid double counting where the program cost was a central administration activity already included in the overhead (p. 11).

In addition to substantial financial outlays for the federally mandated programs themselves, these six institutions faced rapidly increasing administrative costs. Over the ten-year period, these costs increased from "a negligible share to as much as one-eighth to one-quarter of the general administrative costs of these institutions" (Van Alstyne and Coldren 1976, p. 15).

The experience of two other institutions indicates the ways in which extra expenses must be calculated into administrative budgets for complying with federal programs. Stanford University (Rosenzweig, Wilkes, and Freedman 1977) notes that the Civil Rights Act of 1964 requires the employer to keep all employment applications on file for six months, while the Age Discrimination in Employment Act

*These programs are: Title IV of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; the Equal Pay Act of 1963; Executive Order 11246, as amended by Executive Order 11375 (Affirmative Action); the Age Discrimination in Employment Act of 1967, as amended (this excludes the age 70 limit); Fair Labor Standards Act of 1938, as amended; the Social Security Act of 1935, as amended; the Employment Security Amendments of 1970 (this includes both unemployment compensation and Social Security tax increases); the Health Maintenance Organization Act of 1973; the Employment Retirement Income Security Act of 1974; the Economic Stabilization Act of 1970 (public institutions were exempted; private institutions were exempted in 1974); the Occupational Safety and Health Act of 1970; and regulations implemented under several laws by the Environmental Protection Agency.

of 1967 requires that these records be kept for one year. Since it receives 10,000 applications annually, the university had to hire one new employee just to fill and empty files, and it spent $1,000 on new filing cabinets to meet the recordkeeping requirements. At the University of Iowa (Spriestersbach and Farrell 1977), several federal programs* resulted in the addition of one new employee, five filing cabinets for new records, and $15,000 in computer expenses.

The higher education community finds that the administrative problems posed by federal regulations do not lay solely in escalating costs. Of equal importance, many point out, is a change in administrative structure that is underway on college and university campuses. Inexorably, as the need to respond efficiently to the federal government grows, college administration systems are becoming more centralized. Columbia University President William McGill comments:

> Today any enterprise dependent on federal funds must, as a matter of course, organize itself to furnish a continuous flow of documentation to regulatory agencies [in a large number of areas]. The paper flow is truly stupendous (1976, p. 13).

In one respect, this increased centralization may be regarded positively. The University of California at Berkeley believes the pressure to meet reporting requirements has resulted in improved "financial records, [and] accounting systems." The university has also developed new inventory practices to fulfill requirements for screening on equipment purchases, and the new practices "should provide better services in other areas as well" (Bowker 1977, p. 377).

The general view, however, appears to be that more centralized and costly administrative activities are detrimental to colleges' efforts to achieve the very goals for which legislation has been designed. This opinion is evident in a report from one University of Iowa administrator responsible for implementing the Buckley amendment (The Family Educational Rights and Privacy Act of 1974, as amended, guaranteeing students' privacy for and access to their academic records) who complained:

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*These programs are: (1) Fair Labor Standards Act: to record information needed for covered employees; (2) Supplemental Retirement Annuities Law: to implement its rules; (3) Pension Law: to record on W-2 forms an employee's participation in a qualified pension plan; (4) employment statistics: to conduct a federally mandated survey of employment in higher education; and (5) Federal Truth in Lending Act: to mail to new employees a required statement (Spriesterbach (1977).

> [The Buckley amendment] has taken valuable time that I should have been spending helping our candidates find positions. . . . Its abrupt passage and lack of clarity have caused great difficulty to this office, to employers, and most importantly, to the candidates themselves (Spriesterbach (1977, p. 30).

Furthermore, increased centralization of decisionmaking may create situations in which decisions are delayed, or made unnecessarily complicated. Bowker notes that "mandated rules, regulations and reports provide opportunities for delay and for extending problems almost indefinitely" (Bowker 1977, p. 408).

The higher education community has almost universally attributed its administrative burdens to excessive federal requirements. One researcher, however, has recently suggested that a college community can aggravate its administrative problems because of its "institutional style," i.e., the manner in which an institution "conducts its affairs" (Scott 1978, p. 20). Scott reviews equal employment opportunity compliance at comparably situated colleges to illustrate how leadership style influences program effectiveness. He reports that the least effective program has the most bureaucratic structure. One program includes a variety of means to deal with equal employment opportunity and illustrates how cumbersome the bureaucratic machinery can be. The entire program consists of:

(1) An affirmative action office headed by "a middle-aged Puerto Rican male, a former social worker," (p. 21) whose staff designs and processes forms, assists in preparing the university's affirmative action plan, and collects departmental data. This officer has little contact with faculty or administrative officers.

(2) A faculty-staff Affirmative Action Advisory Committee that monitors campus compliance activities, but which does not work closely with the affirmative action officer.

(3) A Provost's Advisory Committee for Women, which responds to individual complaints, monitors searches for faculty and administrative positions, participates in affirmative action and Title IX affairs, and advises the Provost on personnel matters for women.

(4) A Title IX office.

(5) A new committee on the problems of the handicapped.

Inevitably, this diffuse organization results in such activities as multiple requests for data, complicated forms to be completed, and lengthy reports. At this school "Affirmative Action is the object of scorn by department chairmen . . . because the administration of the program is seen as inept" (p. 22).

In contrast, Scott reports favorably on the program at another institution where the equal employment officer is "a woman in her early thirties who had a successful career teaching English on the campus" before her current position (p. 23). She closely monitors campus compliance with the university's affirmative action plan and is favorably regarded by faculty and administrators. Scott finds that "the absence of long and involved forms, together with her visibility and desire to help . . . have helped make this environment progressive and nonbureaucratic" (p. 23).

Adversarial Relations

Higher education leaders have often charged that federal investigators on campus have promoted an adversarial relationship between the institution and the government, so that common purposes are not properly advanced. This criticism is frequently the kind of rhetoric faulted by Saunders as unconstructive and negatively influential in higher education's federal relationships (Saunders 1977, p. 45). Nonetheless, this complaint merits attention because it is so widespread and because hostile attitudes make more difficult the job of achieving compliance through cooperative efforts.

A major cause of hostility is higher education's perception that at times federal representatives appear to consider colleges and universities as merely one more part of the nation's industrial sector. Education officials believe that colleges' social contributions differentiate their activities from traditional business enterprises, but that this distinction is largely ignored when regulations are written and enforced. Albert H. Bowker, president of the University of California at Berkeley, presents this view:

> Frequently [government officials] have a tendency to view the benefits in the same way as those dispensed to industry by government contracts or favorable legislation: Education is just another industry, its leaders like those in industry rationalizing self-interests by reference to public welfare. . . . Yet the primary consequences of the government's largesse have been expanded educational opportunities for citizens and the benefits that flow to everyone from research and higher levels of education (Bowker 1977, p. 374).

Other writers who share this belief that higher education undeservedly receives "business" treatment also point out that business regulations do not mesh successfully with the rules and forms of behavior that have evolved in the higher education community. Todorovich (1976) finds this conflict basic to the tension between government and the university:

> Such imponderabilities [sic] like the role of universities as trusties [sic] of the intellectual and cultural language . . . are rarely if ever reflected in the contractual language. . . . There is a basic asymmetry between the demand of the government that the university obeys all of its rules and the almost total unwillingness of the same government to adjust its actions to the intrinsic life-rules of the university (pp. 13-14).

Some observers also suggest that the adversarial relationship between higher education and the federal government has been exacerbated because both sides tend to employ lawyers to represent their interests. Bowker (1977) finds that lawyers often conflict with campus administrators and faculty when a problem must be resolved because they want to see all aspects of a decision incorporated into a formal agreement. In contrast, administrators who "are paragons of order, formality, and attention to detail in comparison with the faculty," believe that successful problem-solving frequently requires "informal agreements," and a willingness to leave certain issues unstated or certain details ignored (Bowker 1977, p. 405). Faculty and administrators therefore find lawyers' predilection for written agreements a source of tension.

Reforming the Regulatory Process

The regulatory process, from its initial actions to the final product, leaves many higher education observers dissatisfied with how regulations affecting its interests are developed. In an effort to make this process more responsive to circumstances at colleges and universities, higher education advocates have recommended that it be reformed to produce more realistic, enforceable regulations.

Recommendations for reform developed by Fadil and Coddington (1977) are designed to deal comprehensively with the range of problems the higher education community has with the regulatory process. Their guidelines would have every proposed regulatory bill include:

> (1) . . . a clear statement of intended outcomes and a requirement that the effectiveness of subsequent regulations for achieving these outcomes be reported annually to Congress by the responsible regulatory agency;
>
> (2) . . . a fiscal note estimating as accurately as possible total direct, indirect, and opportunity costs of the proposed legislation . . . [and] an estimate of the differential impact of all three types of costs on identifiable classes of 'regulatees' . . .;
>
> (3) . . . as part of its statement of anticipated effect, [a description of] where its foreseen rules might conflict or overlap with existing rules . . .
>
> (4) . . . a "sunset" provision . . . [terminating] any such act on a given date . . . unless, a counteracting measure to extend the act [is enacted];

> (5) . . . [a clear statement] that penalties for non-compliance are intended to be limited insofar as possible to the domain of the purposes of legislation . . .;
>
> (6) [a requirement] that the responsible agency hold open advance consultation with the 'regulatees' prior to drafting regulations . . .;
>
> (7) [an effort to see that] regulations, especially centralized and broadly pervasive regulations are reduced towards a vanishing minimum . . ." (p. 5-6).

Such guidelines would attempt to clarify congressional goals for any particular legislation, so that regulatory requirements are tailored to those goals and do not go beyond congressional intentions. The fiscal note would require Congress to consider carefully the cost problems associated with compliance, and perhaps offer financial assistance to certain affected groups. A more open method of consultation before regulations are written would afford higher education interests an opportunity to obtain more realistic and effective regulations for achieving compliance.

This is a propitious period for influencing the regulatory process. Executive Order 12044 (1978) indicates the executive branch's interest in reforming the regulatory process. The Order has as a major objective that:

> Regulations shall be as simple and clear as possible. They shall achieve legislative goals effectively and efficiently. They shall not impose unnecessary burdens on the economy, on individuals on public or private organizations, or on State and local governments (p. 12661).

The Executive Order also encompasses other recommendations that could well serve higher education interest groups. For example, it requires that a regulatory agency: (1) Take active steps to consult with affected interest groups before regulations are written; and (2) "[make] an estimate of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation" before significant regulations "are approved as publishable for comment" (p. 12662).

Summary

In the past, higher education leaders have been criticized for not presenting effective analyses of their problems to the appropriate federal representatives. It has been argued that this lack of informed discourse on the problems institutions face has hampered efforts to exert a favorable influence on federal legislation and regulations. For example, Charles Saunders, Director of the American Council on

Education's Office of Governmental Relations, commented on this problem:

> . . . the literature represents anecdotal, undocumented complaints about the evils of government interference and lacks the disciplined examination of the federal role on the individual campus (Saunders 1977, p. 217).

Moreover, the academic community has frequently been slow to recognize where its interests lay in the multitude of congressional and regulatory activities. Therefore, its position on federal relations too often has been one of reaction instead of foresight. As Harvard University president Derek Bok notes:

> By failing to focus on emerging problems at an early stage, colleges and universities consistently find themselves reacting at the eleventh hour to initiatives proposed by the government. Their submissions are often short on facts and largely defensive in tone. In most cases, the materials have been chiefly devoted to criticizing proposed legislation without offering constructive proposals to deal with several problems of undoubted national concern (1976, p. 25).

Such charges have made the academic community aware of its need to improve its federal relations. Consequently, higher education advocates have made new efforts to influence the development of federal policy or to alter current policy by presenting substantive information on the problems and benefits of current federal activities.

This new effort takes two directions. On the one hand, colleges and universities recognize that to be persuasive they must provide detailed, quantitative information on how federal policy influences their operations. On the other hand, many in higher education argue that this approach alone fails to encompass all problems in federal relations. These observers argue that many qualities in their learning, teaching, and research activities cannot be so measured but are nevertheless important because they serve broad social purposes. In lieu of quantitative information, they offer personal accounts that underscore their problems with federal regulations.

Higher education advocates need to develop more sophisticated and detailed approaches for both kinds of lobbying efforts. It seems clear, however, that their most persuasive lobbying will occur when they successfully merge both approaches in a united front that best represents the interests of the entire academic community.

Conclusion

The higher education community's current conflicts with federal agencies originated during the 1960's, when colleges and universities were caught up in the national movement to provide equal opportunities to all groups in society. Higher education was considered an important vehicle in the effort to achieve social justice because it could provide skills necessary to upward social and economic mobility. In the federal view, it was therefore appropriate to support higher education to achieve social objectives.

In the past fifteen years, the federal government has also worked to win equity for employees in the workplace by revising existing laws or enacting new ones that monitor employer-employee relations. As major employers, colleges are therefore subject to most laws affecting traditional business enterprises. But they contend that these regulations affect them more adversely because they have distinctive financial and employment structures that make it extremely difficult to adjust to the financial burden imposed by these laws.

Recognizing the influence of both civil rights regulations and employment laws upon its activities, the higher education community is beginning to identify specific problems it has in its federal relations. This process calls for a realistic appraisal of what is occurring on college campuses. The academic community should include in this appraisal an assessment of whether college and university problems are different from those experienced by other enterprises, and, if they are, whether colleges should consequently be treated differently from other entities by the federal government.

With respect to civil rights laws and regulations, such as those described in Chapter one, administrator and faculty fears that regulations would undermine professional judgments have not been realized, although the potential for abuse does exist. But three major problems have emerged. First, there is sufficient evidence to suggest that the burden of bureaucratic procedures resulting from regulations may in itself be harmful because it creates an antagonistic atmosphere in which attention is directed away from academic concerns to focus on procedural issues. Major responsibility for cumbersome bureaucratic procedures rests with the federal government, but as Scott points out, institutions also contribute to these difficulties. The higher edu-

cation community could assist itself by streamlining its internal processes.

Second, and equally important, the compliance process for federal civil rights enforcement has proven to be a major source of friction between federal agencies, institutions, and special interest groups. There are no clear resolutions to the problems that have developed: (1) HEW has failed to promptly and clearly state its criteria for evaluating compliance, so that both institutions and interest groups must frequently operate with limited knowledge of what is required; (2) HEW has also been faulted for being insensitive to academic processes, thereby making it difficult to develop a cooperative effort between institutions and government; (3) protracted negotiations between HEW and an institution over its compliance status constitutes on interim penalty process, since it is costly to the institution, but protected groups charge that the delays involved in a final decision forestall equitable treatment.

Finally, compliance with civil rights regulations has serious financial implications for colleges and universities. For the most part, they must simply bear the costs of compliance, which include both administrative costs and compensation payments. But the academic community believes that in at least some instances, such as structural changes for Section 504, they deserve some assistance from the federal government.

The financial burden presented by federal requirements is more evident in those areas where federal law regulates the employer-employee economic relationships. As discussed in chapter two, such laws create serious hardships for labor-intensive enterprises like colleges and universities. Colleges note that theoretical exemptions from some federal laws are realistically not possible. They therefore seek to alleviate their burden by changing the law, as in the case of Social Security funding, or by changing their own institutional practices to adapt to new laws, as in the case of retirement policy.

Overall, regulatory problems have resulted in large part because higher education holds as fundamental principles certain concepts that are often in conflict with regulatory practices. The list that follows summarizes these concepts as they appear in discussion among higher education officials and throughout the literature on federal regulatory problems:

- The academic community is an important national resource with unique characteristics that have served the nation well in carrying out its educational mission.

- Federal legislators and agencies do not sufficiently recognize these differences in the conduct of their relationships with the higher education community.

- Current federal regulations intended to achieve social objectives are inefficient and liable to be unsuccessful because they are not based on an understanding of how a campus community functions.

- With respect to employment-related laws, a college's nonprofit status does not save it from costly personnel expenses. These expenses increase college difficulties in meeting its educational obligations.

Clearly, higher education interests believe they merit special treatment, and perhaps they do. Pleas for special treatment, however, do not constitute a coordinated, planned effort to influence policymaking. There still remains the major task of using effective lobbying techniques that can speak for the sometimes conflicting interest groups that constitute the academic community.

Bibliography

The ERIC Clearinghouse on Higher Education abstracts and indexes the current research literature on higher education for publication in the National Institute of Education's monthly *Resources in Education (RIE)*. Readers who wish to order ERIC documents cited in the bibliography should write to the ERIC Document Reproduction Service, Post Office Box 190, Arlington, Virginia 22210. When ordering, please specify the ERIC document number. Unless otherwise noted, documents are available in both microfiche (MF) and hard/photocopy (HC).

Age Discrimination in Employment Act Amendments of 1978. P.L. 95-256 § 3 29 U.S.C. § 631.

Batten, Michael D. "The Age Discrimination in Employment Act of 1967," in *Federal Regulations and the Employment Practices of Colleges and Universities.* A Guide to the Interpretation of Federal Regulations Affecting Personnel Administration on Campus. Washington, D.C.: National Association of College and University Business Officers, August 28, 1975.

Bender, Louis W. *Federal Regulation and Higher Education.* ERIC Research Report No. 1. Washington: American Association for Higher Education, 1977. ED 135 323. MF-$0.98; HC-$5.17.

Biehl, G. Richard. *Guide to the Section 504 Self-Evaluation for Colleges and Universities.* Washington: National Association of College and University Business Officers, 1978. ED 152 208. MF-$0.98; HC-$8.01.

Bok, Derek C. *Harvard University. The President's Report 1974-1975.* Cambridge: Harvard University, January 19, 1975.

Bowker, Albert H. *The Impact of Federal Regulations on the University of California. An Institutional Self-Study for the Sloan Commission on Government and Higher Education.* Berkeley: University of California, September 19, 1977.

Califano, Joseph A., Jr. "Statement of Secretary Joseph A. Califano, Jr. Department of Health, Education, and Welfare." March 22, 1978a.

———. "Statement by Secretary Joseph A. Califano, Jr. Department of Health, Education, and Welfare." May 12, 1978b.

———. "Statement of Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare," June 26, 1978c.

Coldren, Sharon. Conversation with author, March 15, 1978.

———, and Knepper, Paula. "Social Security Taxation Project: Supporting Data." Economics and Finance Unit, American Council on Higher Education and Exxon Education Foundation, February 1978.

"Colleges Must Have Acceptable Affirmative Action Plans, OFCCP Official Says," *Higher Education Daily*, May 11, 1978, p. 3.

Commission on Colleges. Southern Association of Colleges and Schools. *Colleges & Universities Speak Out on Cost of Federal Compliance in Higher Education.* A Special Report. Atlanta: December 1976. ED 134 083. MF-$0.98; HC-$2.03.

"Compendium of Federal Authorities Applicable to Colleges and Universities with Divisional Cross References." Sloan Commission on Government and Higher Education. [Cambridge, Mass.]: April 1977.

Conrad, Clifton and Cosand, Joseph. *The Implications of Federal Education Policy.* ERIC Research Report No. 1. Washington: American Association for Higher Education, 1976. ED 124 066. MF-$0.98; HC-$3.86.

Corwin, Thomas M. "A Research Prespective on Mandatory Retirement," in *Changing Retirement Policies. Current Issues in Higher Education* edited by Liza Mickle. Washington, D.C.: American Association for Higher Education, 1978.

Coughlin, Ellen K. "Campuses Face Boost in Social Security Taxes," *The Chronicle of Higher Education*, January 16, 1978a, p. 16.

———. "Colleges Could Retire Tenured Teachers at 65—Until 1982," *The Chronicle of Higher Education*, March 13, 1978b, p. 1.

Dunkle, Margaret. *Competitive Athletics: In Search of Equal Opportunity.* A manual on intercollegiate athletics for athletic directors, administrators, coaches and others concerned with providing equal athletic opportunity in colleges and universities. Washington, D.C.: Resource Center on Sex Roles in Education, National Foundation for the Improvement of Education, Fall 1976. ED 135 789. MF-$0.98; HC-$12.21.

Education Amendments of 1972, 20 U.S.C. § 1681. P.L. 92-318 (1972) and P.L. 93-568 (1974).

Employee Retirement Income Security Act of 1974 (ERISA), P.L. 93-406.

Engstrand, Gary (Assistant to the Vice President for Administration and Planning, University of Minnesota) to author, May 31, 1978.

"Equal Employment Opportunity. Final Rulemaking," *Federal Register* 42 (January 18, 1977): 3453.

Executive Order 12044. "Improving Government Regulations," *Federal Register* 43 (March 24, 1978): 12661-12270.

Executive Order 11246. *Nondiscrimination Under Federal Contracts.* Washington: U.S. Department of Health, Education, and Welfare, Office for Civil Rights, September 24, 1965, as amended by Executive Order 11375, October 13, 1967.

Fadil, Virginia, and Coddington, Parker. "Implementing Federally-Mandated Programs: Issues and Recommendations." An Occasional Issue Paper. Washington: National Association of Independent Colleges and Universities, 1977.

Fields, Cheryl M. "29 Universities Warned U.S. May Withhold Contracts," *The Chronicle of Higher Education,* June 23, 1975a, p. 1.

———. "Affirmative Action Reprieve," *The Chronicle of Higher Education,* 1975b, p. 5.

———. "U.S. Holds Up $1.5 Million Contract for Berkeley Lab; Layoffs Threatened," *The Chronicle of Higher Education,* May 1, 1978a, p. 4.

———. "U.S. Approves Release of Contracts at Berkeley," *The Chronicle of Higher Education,* May 8, 1978b, p. 8.

"Format for the Development of an Affirmative Action Plan by Institutions of Higher Education." *Federal Register* 40 (August 25, 1975): 37064.

The George Washington University. A Report to the Middle States Association of Colleges and Schools, Commission on Higher Education. Washington: GWU, December 1976.

Gerry, Martin H. "Memorandum to College and University Presidents," August 1975.

Gladieux, Lawrence E. and Wolanin, Thomas R. *Congress and the Colleges.* Lexington, Mass.: D.C. Heath, 1976.

Grant, W. Vance and Lind, C. George. *Digest of Education Statistics* 1977-78. Washington, D.C.: National Center for Education Statistics, 1978.

Greenough, William C. (Chairman, Teachers Insurance and Annuity Association and College Retirement Equities Fund). Statement Before the Subcommittee on Labor of the Committee on Labor and Public Welfare, U.S. Senate, June 23, 1972, On Proposed Pension Legislation, the "Retirement Income Security for Employees Act of 1972." (S. 3598).

———. Testimony before the House Subcommittee on Retirement Income and Employment, March 13, 1978.

Haslam, C. L. "Age Discrimination in Campus Employment," *The Journal of College and University Law* 2 (Summer 1975): 326-341.

Heim, Peggy. "Implications of Mandatory Retirement Legislation for Higher Education Institutions," in *Changing Retirement Policies. Current Issues in Higher Education* edited by Liza Mickle. Washington, D.C.: American Association for Higher Education, 1978.

Heller, William F. "Higher Education and the Pension Reform Law (ERISA)" in *Federal Regulations and the Employment Practices of Colleges and Universities.* A Guide to the Interpretation of Federal Regulations Affecting Personnel Administration on Campus. Washington: National Association of College and University Business Officers, August 28, 1975.

Hemmings, Madeline B. Conversation with author, March 2, 1978.

Higher Education Guidelines. Executive Order 11246. Washington, D.C.: Department of Health, Education, and Welfare, Office of the Secretary, Office for Civil Rights, October 1, 1972. ED 0[illegible]. MF-$0.98; HC-$6.51.

Hornig, Donald. "The Costs of Government Regulation," Draft presented at the Fourth General Conference on the Idea of a Contemporary University, University Centers for Rational Alternatives. Washington: December 10-11, 1976.

Jenny, Hans H. *Early Retirement. A New Issue in Higher Education: The Financial Consequences of Early Retirement.* New York: Teachers Insurance and Annuity Association of America, 1974. ED 095 759. MF-$0.98; HC-$3.68.

Karlesky, Joseph H. *Federal Regulations at Franklin and Marshall College.* Study for the Sloan Commission on Government and Higher Education. Lancaster, Pennsylvania: Franklin and Marshall College, October 1977.

Kershaw, Joseph A. *The Federal Government and Williams College.* A Report to the Sloan Commission on Government and Higher Education. Williamstown, Mass.: September 1977.

King, Frank (Head, TIAA-CREF, Education Research Department) Conversation with author, May 10, 1978.

Ladd, Everett Carll, Jr. and Lipset, Seymour Martin. "Many Professors Would Postpone Retirement If Law Were Changed," *The Chronicle of Higher Education,* November 7, 1977, p. 7.

Magarrell, Jack. "College Given a Warning on Dropping Social

Security." *The Chronicle of Higher Education.* February 27, 1978, p. 38.

Making Affirmative Action Work in Higher Education. An Analysis of Institutional and Federal Policies with Recommendations. A Report of the Carnegie Council on Policy Studies in Higher Education. San Francisco: Jossey-Bass, 1975.

McCormack, John J., Jr. "Mandatory Retirement Age," Speech presented at the CUPA National Seminar, San Diego and Fort Worth, February 20-24, 1978.

McGill, William J. "Government Regulations and Academic Freedom." Speech presented at the University Centers for Rational Alternatives. December 11, 1976. The Fourth General Conference on the Idea of a Contemporary University, University Centers for Rational Alternatives, Washington, D.C.: December 11, 1976.

Minter, W. John and Fadil, Virginia. *The Projected Impact of the New Social Security Taxes Upon Employer Contributions at Independent Colleges and Universities—1979 to 1987.* Washington, D.C.: National Association of Independent Colleges and Universities, January 1978. ED 149 704. MF-$0.98; HC-$2.03.

Mulanaphy, James M. *Retirement Preparation in Higher Education.* A study of counseling and information programs. New York: Teachers Insurance and Annuity Association, College Retirement Equities Fund, 1978. ED 150 911. MF-$0.98; HC-$6.51.

National Association of College and Business Officers. "History of NACUBO Cost Estimate." [Washington], September 1977.

National Association of Independent Colleges and Universities. "The Impact of the Federal Regulatory Process Upon the Fiscal Condition of Independent Colleges and Universities." Grant Proposal (n.d.).

"Non-Discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance," *Federal Register* 42 (May 4, 1977): 22677.

"Nondiscrimination in Federally Assisted Programs. Annual Operating Plan for Fiscal Year 1978." *Federal Register* 43 (February 17, 1978): 7048.

"Nondiscrimination on the Basis of Sex," *Federal Register* (June 4, 1975), pp. 24128-24144. 45 C.F.R. § 86.

Patton, Carl Vernon, Diane Kell, and Joseph Zelan. *A Survey of Institutional Practices and an Assessment of Possible Options Relating to Voluntary Mid- and Late-Career Changes and Early Re-*

tirement for University and College Faculty. Final Report. Washington, D.C.: National Science Foundation, November 1977. ED 152 183. MF-$0.98; HC-$17.93.

Policy Analysis Service, American Council on Education. Seminar on Social Security Taxes, April 14, 1978.

Recruitment, Admissions and Handicapped Students. A Guide for Compliance with Section 504 of the Rehabilitation Act of 1973. Washington, D.C.: American Association of Collegiate Registrars and Admissions Officers and the American Council on Education. April 1978. HE 010 166 (RIE Nov. '78). MF-$0.98; HC-$3.98.

The Rehabilitation Act of 1973 29 U.S.C. § 794. [P.L. 93-112], as amended [P.L. 93-516].

"Report of the Interagency Task Force on Higher Education Burden Reduction," December 14, 1976, in *A Report of the Commission on Federal Paperwork Education.* Washington, D.C.: Government Printing Office, April 29, 1977.

"Reporting and Disclosure Requirements of the Employee Retirement Income Security Act," Special Supplement, *BNA Pension Reporter* number 161 (October 31, 1977).

Revised Order No. 4, *Federal Register* 36 (December 4, 1971): 23152.

Rosenzweig, Robert M.; Wilkes, Christopher; and Freedman, Nancy. *The Stanford University Medical Center and the Federal Government.* A Report for the Sloan Commission on Higher Education and Government. Palo Alto: Stanford University Medical Center, September 1977.

Saunders, Charles B., Jr. "Easing the Burden of Federal Regulation: The Next Move Is Ours," *Educational Record* 57 (Fall 1976): 217-224.

———. Memorandum to the U.S. House of Representatives, June 6, 1978.

Scott, Robert A. "More Than Greenbacks and Red Tape: Campus Effects and Federal Compliance Requirements." 1978. Draft Report. A final version by this title appears in *Change* 10 (April 1978): 16-23.

———. "Lord, Squires, and Yeomen: Collegiate Middle-Managers and Their Organizations," ERIC/AAHE Research Report No. 9. Washington, D.C.: American Association for Higher Education, forthcoming.

Shulman, Carol Herrnstadt. *Affirmative Action: Women's Rights on Campus.* ERIC/Higher Education Research Report No. 6.

Washington, D.C.: American Association for Higher Education, 1972. ED 066 143. MF-$0.98; HC-$2.42.

———. "Keeping Up With Title IX," ERIC/Higher Education *Research Currents,* January 1977. ED 132 910 . MF-$0.98; HC-$2.03.

"Small Contractors May Be Affected by Change in Contract Compliance Rules," *NACUBO Business Officer,* January 1978, p. 7.

Spriestersbach, D. C. and Farrell, William J. "Impact of Federal Regulation At a University." *Science* 198 (October 7, 1977), 27-30.

Steinbach, Sheldon Elliot. "Memorandum to Interested Persons. Civil Rights Reorganization." Washington, D.C.: [American Council on Education], March 2, 1978.

"TIAA-CREF Chairman Asks for Changes in ERISA," *Higher Education Daily,* March 14, 1978, p. 1.

Teachers Insurance and Annuity Association of America. College Retirement Equities Fund. *ERISA Bulletin #8.* "Minimum Standards for Employee Pension Plans (Definition on an Hour of Service and Computation of a Year of Service)." August 12, 1977a.

ERISA Bulletin #19. "The Summary Plan Description and Claims Procedure for Employee Pension Plans." August 29, 1977b. Attachment #1. "Retirement Resolution and Summary Plan Description for Standard TIAA-CREF Retirement Plnas." Attachment #2 "Supplement to the Retirement Resolution and Summary Plan Description for Standard forms for annual reporting."

———. *ERISA Bulletin #22* "Exemption from Title I of ERISA Made Available to Tax-Deferred Annuity Plans. December 23, 1977c.

Todorovich, Miro. "Would A Reorganized Federal Department of Education Mean Better Higher Education?" Paper presented at the Fourth Annual Conference on the Idea of A Contemporary University, Washington, D.C., December 10, 1976.

"The Yes—But Retirement Act," *The New York Times,* October 21, 1977, p. A-30.

"Twenty-six Campuses and the Federal Government," *Educational Record* 44 (April 1963): 95-136.

University of Minnesota. "Report and Recommendations of Title IX. Intercollegiate Athletics, Recreational Sports, Physical Education." [Minneapolis]: University of Minnesota, July 2, 1976.

Van Alstyne, Carol and Coldren, Sharon L. *The Costs of Implementing Federally Mandated Social Programs at Colleges and Universities.* Washington, D.C.: Policy Analysis Service, American

Council on Education, June 1976. ED 131 823. MF-$0.98; HC-$5.11.

Weinberger, Casper W. *Sex Discrimination Regulations. Hearings before the Subcommittee on Postsecondary Education of the Committee on Education and Labor, House of Representatives, Ninety Fourth Congress, First Session.* Hearings held in Washington, D.C., June 17, 23-26, 1975. ED 118 012. MF-$0.98; HC-$35.49.

Willard, Donald S. "A Time to Retire: Raising the Mandatory Retirement Age," Portfolio, *NACUBO Business Officer,* November 1977, p. 12-14.